LIEW CHOY HUNG

v.

FORK KIAN SENG

HIGH COURT MALAYA, KUALA LUMPUR
NH CHAN JCA
[CIVIL SUIT NO: S3-22-507-92]
19 NOVEMBER 1999

LAW OF TRUST: *Resulting trust - Joint property - Man and woman living together as husband and wife but not married to each other - Purchase of house in joint names - Parties providing purchase money in unequal shares - Beneficial interest in property - Whether there was resulting trust by operation of law - Whether there was resulting trust for each other in proportions in which they provided purchase money - Whether presumed resulting trust displaced by evidence of common intention*

LAW OF TRUST: *Resulting trust - Advancement - Man and woman living together as husband and wife but not married to each other - Payment of money by one to the other - Whether creating a resulting trust - Whether there is an obligation to repay the grantor*

The plaintiff ('Miss Liew') and the defendant ('Mr Fork') had been living together as husband and wife though not married to each other. In 1979 the parties acquired a house in their joint names, with Miss Liew paying RM117,044.66 for the house and Mr Fork RM10,812.16. In 1989 the parties parted company, and following that, Miss Liew filed the present proceeding claiming that she was entitled to have the house all to herself, on the grounds, firstly, that she had substantially paid for it, and secondly, that, when the bank threatened to auction off the house in 1986, Mr. Fork had intimated to her that "I have only a very small share in this property. Do not let the bank auction the land. Take over my share and redeem the property. I owe you a lot of money and take over my share". The claim to the house apart, Miss Liew also sought to recover certain amount of money which she had allegedly lent to Mr Fork during the fifteen years they were living together. Mr Fork disputed Miss Liew's claim to the house but was prepared to accept an aliquot share of the property. Mr Fork also denied that he had borrowed any sums of money from Miss Liew. Before the learned judge the primary questions that arose were: (i) whether in the circumstances Miss Liew and Mr Fork were holding the house on a resulting trust for each other; and (ii) whether money was paid by Miss Liew to Mr Fork such as to import *prima facie* an obligation on Mr Fork to repay Miss Liew on a resulting trust.

Held:

[1] The principle of law applicable herein is the age-old principle that if two or more persons purchased property in their joint names and there was no declaration of trusts on which they were to hold the property, they held the property on a resulting trust for each other proportionate to their contributions to the purchase price.

[1a] This kind of resulting trust is however rebuttable by evidence of an alternative intention ie. by evidence of a common intention, which had been communicated between them and made manifest at the time of the acquisition itself, to share the property in other proportions or, to have one of them take the whole beneficial interest in the property, notwithstanding the inequality of their contributions to the purchase price. The presumed resulting trust is displaced upon such a common intention being established, and once such a finding is made it is for the party claiming a greater proportion of the share to show constructive trust.

[2] The intimation made by Mr Fork to Miss Liew allegedly occurred in 1986. There had been no discussion therefore between Mr. Fork and Miss Liew at the time of the purchase of the property in 1979 as to the beneficial shares which they ought to have in the property, let alone a communication from Mr Fork to Miss Liew asking her to take over his share of the property. That being so, the alleged common intention which would have displaced the resulting trust was not established.

[3] The parties were holding the property on a resulting trust for each other in proportion to the purchase money that they had provided. Mr Fork is entitled on a resulting trust to an eliquot share of the property for his contribution of RM10,812.16 (equivalent to 8.5 %) and Miss Liew is also entitled on a resulting trust to an eliquot share of the property for her contribution of RM117,044.66 (equivalent to 91.5%). The trust can be enforced by an order for sale and the proceeds of the sale will be proportionately divided between the parties.

[4] By producing copies of the relevant cheques, Miss Liew has proved that Mr Fork had received the payments as shown by the cheques marked as P1, P2, P3A, P3B, P4 and P9. Once such payments, which have been made to him as a volunteer, have been proved, there is an obligation on Mr Fork's part to repay Miss Liew on a resulting trust. Clearly, in the absence of any suggestion that such payments by cheques were gifts, or that they were paid in settlement of an existing debt, or that they were given in return for cash, or anything of that sort which would have

displaced the resulting trust, the proof of payment of money herein (being a voluntary transfer of property to another) *prima facie* imports an obligation to repay the grantor on a resulting trust.

[4a] By not producing copies of the other four cheques listed in Exhibit B, and by merely producing the butts and bank statements thereof, Miss Liew has not managed to prove that the amount shown on the butts have been paid to Mr Fork. Miss Liew was not therefore entitled to any refund of these amounts.

[5] Miss Liew's aliquot share in the joint property will not be increased by her paying the quit rent and assessment for the premises. In order for a resulting trust to arise, the contribution to the purchase price must be for the acquisition of the property. And so, the fact that Miss Liew had paid the quit rent and assessment for the joint property does not establish any resulting trust in her favour.

[6] Mr Fork is to transfer his 8.5% share in the joint property to Miss Liew at the agreed price of RM34,000, whereupon Miss Liew shall be entitled to the whole beneficial interest in the property. There shall also be judgment for Miss Liew in the sum of RM14,321.71. Mr Fork's counter-claim is however dismissed.

[Judgment for plaintiff; order accordingly.]

Case(s) referred to:
Bernard v. Josephs [1982] Ch 391 ***(foll)***
Cooke v. Head [1972] 1 WLR 518 ***(foll)***
Dyer v. Dyer [1788] 2 Cox Eq Cas 92 ***(foll)***
Gissing v. Gissing [1971] AC 886 ***(foll)***
Lloyds Bank plc v. Rosset [1991] 1 AC 107 ***(foll)***
Pettit v. Pettit [1970] AC 777 ***(foll)***
Re Vandervell Trusts (No 2), White v. Vandervell Trustees Ltd [1974] Ch 269 ***(refd)***
Savage v. Dunningham [1974] Ch 181 ***(foll)***
Seldon v. Davidson [1968] 2 All ER 755 ***(foll)***
Springette v. Defoe [1992] 2 FLR 388 ***(foll)***
Young v. Young [1984] FLR 375 ***(foll)***

Legislation referred to:
Contracts Act 1950, ss. 30, 70

Other source(s) referred to:
Halsbury's Laws of England, 4th edn, Gifts vol 20 (Reissue), para 40, p 27
Halsbury's Laws of England, 4th edn, Equity vol 16 (Reissue), para 904, p 806
Halsbury's Laws of England, 4th edn, Trusts vol 48 (Reissue), para 612, p 325

For the plaintiff - Chew Swee Yoke; M/s SY Chew & Co
For the defendant - WK Leong; M/s Khaw & Partners

Reported by WA Sharif

JUDGMENT

NH Chan JCA:

In this case it falls on this court to decide on the proportions of the beneficial interests of a man and a woman, who are not married to each other but who have lived together as husband and wife, in the ownership of a house which they have acquired in their joint names. The parties Miss Liew (the plaintiff) who is a well known lawyer in Kuala Lumpur and Mr Fork (the defendant) bought the house jointly with the aid of a housing loan from Bank Bumiputra (M) Berhad for which they were both liable to the bank for its repayment. The loan was secured by a charge to the bank of the property in which they were registered as joint proprietors. Subsequently the outstanding loan for the purchase of the house was repaid with Miss Liew paying off the balance of the loan directly to the bank. There was nothing in the form of an agreement or in the transfer document or in any other place that would indicate how the parties' respective beneficial interests in the property were quantified. In 1989 the personal relationship of the couple faltered and finally it broke down altogether and Mr Fork left. The cause of the breakdown of the relationship is not material for the determination of this case as they were not married to each other. After they fell out, Miss Liew then brought the present proceedings against Mr Fork claiming that she is entitled to have the house as she had substantially paid for it while Mr Fork had only made minimal contributions to its purchase and even on that she claims that Mr Fork had given up his share of it to her. In her statement of claim she also claims for money lent to Mr Fork. The claims are disputed by Mr Fork. Mr Fork counterclaims for the house claiming that he had bought over Miss Liew's share of it but later (at the end of the trial when he was unable to prove that he had paid Miss Liew for the acquisition of her share to the house) his counsel Mr Leong was prepared to accept an aliquot share of the house as representing his contribution to which he had made to the purchase of the house.

The Law

The principle of law that I invoke in this case, and for this I quote Dillon LJ in *Springette v. Defoe* [1992] 2 FLR 388, at 391, "is the age old principle that if two (or more) persons purchase property in their joint names and there has been no declaration of trusts on which they are to hold the property, they will, as a matter of law in the absence of evidence to the contrary, hold the

property on a resulting trust for the persons who provided the purchase money in the proportions in which they provided it: see *Dyer v. Dyer* [1788] 2 Cox Eq. Cas. 92 and the speech of Lord Upjohn in *Pettit v. Pettit* [1970] AC 777 at p. 814."

In *Pettit v. Pettit* [1970] AC 777, at 814 Lord Upjohn said this:

> It is far more likely to be solved by the doctrine of resulting trust, namely, that in the absence of evidence to the contrary if the property be conveyed into the name of a stranger he will hold it as trustee for the person putting up the purchase money and if the purchase money has been provided by two or more persons the property is held for those persons in proportion to the purchase money that they have provided.
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> My Lords, all this is trite law but I make no apology for citing the judgment of Eyre CB in 1788 in the leading case of *Dyer v. Dyer* [1788] 2 Cox, Eq. Cas. 92, 93, 94, set out in full in *White and Tudor's Leading Cases in Equity*, 9th ed. [1928], Vol. 2, 749:
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> > The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold: whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive – results to the man who advances the purchase-money. This is a general proposition, supported by all the cases, and there is nothing to contradict it; and it goes on a strict analogy to the rule of the common law, that where a feoffment is made without consideration, the use results to the feoffor. It is the established doctrine of a court of equity, that this resulting trust may be rebutted by circumstances in evidence.
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> > The cases go one step further, and prove that the circumstance of one or more of the nominees being a child or children of the purchaser, is to operate by rebutting the resulting trust; and it has been determined in so many cases that the nominee being a child shall have such operation as a circumstance of evidence, that we should be disturbing land-marks if we suffered either of these propositions to be called in question, namely, that such circumstance shall rebut the resulting trust, and that it shall do so as a circumstance of evidence.
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> The remarks of Eyre CB in relation to a child being a nominee are equally applicable to the case where a wife is a nominee. Though normally referred to as a presumption of advancement, it is no more than a circumstance of evidence which may rebut the presumption of resulting trust, and the learned editors of *White and Tudor* were careful to remind their readers at p. 763 that 'all resulting trusts which arise simply from equitable presumptions, may be rebutted by parol evidence ...' This doctrine applies equally to personalty.
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> These presumptions or circumstances of evidence are readily rebutted by comparatively slight evidence; ...

For the meaning of resulting trusts by operation of law, see *Halsbury's Laws of England,* 4th edn, Equity vol. 16 (Reissue), para. 904 at p. 806 where it says:

> A resulting trust may arise solely by operation of law, as where, upon a purchase of land, one person provides the purchase money and the conveyance is taken in the name of another, there is then a presumption of a resulting trust in favour of the person providing the money, unless from the relation between the two, or from other circumstances, it appears that a gift was intended (*Dyer v. Dyer* [1788] 2 Cox Eq. Cas. 92 at 93, per Eyre CB; 2 *White & Tudor's Leading Cases in Equity* (9th Edn) 749; and see *Fung Ping Shan v. Tong Shun* [1918] AC 403, PC). There is likewise a presumption of a resulting trust where there is a voluntary transfer of [property][1] into the name of another (*Fowkes v. Pascoe* [1875] 10 Ch. App. 343 at 348; *Vandervell v. IRC* [1967] 2 AC 291) or into the joint names of the grantor and another (*Re Vinogradoff, Allen v. Jackson* [1935] WN 68), ... These two categories of purchase in the name of another and voluntary transfer into the name of another have been classified as 'presumed resulting trusts' because they depend upon the presumed intention of the grantor (*Re Vanderwell's Trusts (No. 2), White v. Vanderwell Trustees Ltd* [1974] Ch. 269 at 287 *et seq*., per Megarry J; revsd without discussing this classification [1974] Ch. 269 at 308, CA). There is also another class of resulting trust, classified as an 'automatic resulting trust' because it does not depend on any intentions or presumptions, where the creation of the trusts is express, although, in the events which happen, the beneficial destination of the property is undermined. This is the case when there is an entire or partial failure of the objects of the trust, and then, to the extent of the failure, the benefit of the trust results automatically to the settlor or his representatives (*Salter v. Cavanagh* [1838] 1 Dr & Wal. 668; *Patrick v. Simpson* [1889] 24 QBD 128; and *Vandervell v. IRC* [1967] 2 AC 291).

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[1]I substitute the word ["property"] for the words "pure personalty" which were in the text because in this country we do not have s. 60(3) of the English Law of Property Act 1925 where, in the case of a voluntary conveyance of land, a resulting trust for the grantor is not to be implied. In the absence of evidence of contrary intention, the grantee takes the land absolutely. There is no such distinction between realty and personalty (immoveable and moveable property) in our law for the creation of resulting trusts by voluntary transfer of real or personal property into the name of another.

According to Megarry J (see *Re Vandervell's Trusts (No. 2), White v. Vandervell Trustees Ltd* [1974] Ch. 269 at 287 et seq.) there are two categories of resulting trusts, namely, the purchase of property in the name of another and the voluntary transfer of property into the name of another, which have

been classified as "presumed resulting trusts". This is because these two types of resulting trusts depend on the presumed intention of the grantor that the property is to be held by the grantee on trust for the grantor, so that the beneficial interest returns (results) to the grantor. The other class of resulting trust is classified as an "automatic resulting trust" because it does not depend on any presumed intention of the settlor. An automatic resulting trust exists where property has been conveyed to another on express trust, but the beneficial interest returns (results) to the transferor because the beneficial destination of the property is undermined. This may happen when there is an entire or partial failure of the objects of the trusts. The part of the trust undisposed of will then result (return) automatically to the settlor.

In the present case where it concerns the house, I have only to determine on the proportions of the beneficial interests in the ownership of the property between Miss Liew and Mr Fork by applying the principle of the presumed resulting trust. I do not have to be concerned at this stage with the type of presumed resulting trust created by voluntary transfer into the name of another or with an automatic resulting trust created by an express trust which has failed. Here, at this juncture, I am only concerned with a presumed resulting trust of the kind that is in favour of the person (persons) providing the purchase money for the property but takes (take) the purchase in the name of another or in their joint names. In *Halsbury's Laws of England,* 4th edn, Gifts vol. 20 (Reissue), para 40 at p. 27 it says:

> 40. Purchase in another's name. Where a person buys real or personal property and pays the purchase money, or part of it, but takes the purchase in the name of another, who is neither his child, adopted-child or wife, *prima facie* there is no gift, but a resulting trust for the person paying the money (*Earl of Plymouth v. Hickman* [1690] 2 Vern 167; *Dyer v. Dyer* [1788] 2 Cox Eq. Cas. 92; *The Venture* [1908] P. 218, CA; *Pettit v. Pettit* [1970] AC 777, HL). The rule applies to the case where several persons purchase property in the name of one (*Wray v. Steele* [1814] 2 Ves. & B. 388; *Bull v. Bull* [1955] 1 QB 234, CA; *Diwell v. Farnes* [1959] 2 All ER 379, CA), and to the case of a purchase taken in the joint names of the person paying the money and of another (*Rider v. Kidder* [1805] 10 Ves. 360). The same rule applies to the case of a voluntary transfer of [property][2] into the name of another jointly with the transferor.

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[2]I substitute the word ["property"] for the words "pure personalty" which were in the text because in English Law by virtue of their Law of Property Act 1925, s. 60(3) a resulting trust is not to be implied by the voluntary conveyance of real property to another merely because it is not expressed to be conveyed as a gift for the grantee.

(*Fowkes v. Pascoe* [1875] 10 Ch. App. 343, CA; *Re Vinogradoff, Allen v. Jackson* [1935] WN 68) or into that other's name alone (*Down v. Ellis* [1865] 35 Beav. 578; *Re Howes, Howes v. Platt* [1905] 2 TLR 501; *Vandervell v. IRC* [1967] 2 AC 291, HL). Proof of payment of money *prima facie* imports an obligation to repay in the absence of any circumstances tending to show anything in the nature of a presumption of advancement (*Seldon v. Davidson* [1968] 2 All ER 755, CA).

Presumed resulting trusts are rebuttable by evidence of an alternative intention. In the case of a voluntary transfer into the name of another, it can be rebutted by evidence of an intention to make a gift of the property to the transferee. Where property is conveyed to the transferor's wife or child, the intention to make a gift of it to them is presumed. This presumption of an intention to make it a gift where property is conveyed from husband to wife or from father to child is known as the presumption of advancement. Or, in the case of a purchase in the name of another or in joint names, it is rebuttable by evidence of an intention that the money for the purchase of the property is to be provided by way of gift, loan, or rent. The presumption of such a resulting trust (that is, where the parties hold each other's shares in the property as trustees for one another proportionate to their contributions to the purchase price) can also be displaced by evidence of the parties' common intention to share the property on a wholly different basis for apportioning the parties' shares, notwithstanding the inequality of their contributions to the purchase price (see *Springette v. Defoe, supra*).

So that, in the present case, and also as held in *Springette v. Defoe (supra)*, the principle of law that is applicable is the age-old principle that if two or more persons purchased property in their joint names and there was no declaration of trusts on which they were to hold the property, they held the property on a resulting trust for each other proportionate to their contributions to the purchase price: see *Dyer v. Dyer* [1788] 2 Cox Eq. Cas. 92; *Pettit v. Pettit* [1970] AC 777, by Lord Upjohn at 814; *Bernard v. Josephs* [1982] Ch. 391; *Young v. Young* [1984] FLR 375, CA. See also *Halsbury's Laws of England*, 4th edn, Trusts vol. 48 (Reissue), para. 612 at p. 325 which says:

> Where property is purchased in joint names, without any express declaration as to their beneficial interests, then, ... if the purchase money was provided in unequal shares, then each party has an equitable tenancy in common under a resulting trust with shares proportionate to his or her respective contributions to the purchase price (*Bernard v. Josephs* [1982] Ch. 391; *Young v. Young* [1984] FLR 375, CA).

This kind of resulting trust is rebuttable by evidence of an alternative intention, such as an intention that the money for the purchase of the property be provided by way of gift, loan, or rent. But as explained in *Springette v. Defoe (supra)* in a case where the purchase money was provided in unequal shares, the presumed resulting trust can also be displaced (rebutted) by evidence (which must be communicated between them and made manifest at the time of the transaction itself) of a common intention to share the property on a basis for apportioning the parties' shares that are disproportionate to their respective contributions to the purchase price. This involvement of a wholly different basis for apportioning the parties' shares can be seen as where there is an agreement at the time of the acquisition to share the beneficial interests equally or in other proportions which are disproportionate to the parties respective contributions to the purchase price. Thus, in *Springette v. Defoe (supra)* it was held that (see the headnote at 388):

> (1) If two or more persons purchased property in their joint names and there was no declaration of trusts on which they were to hold the property, they held the property on a resulting trust for the persons who provided the purchase money in the proportions in which they provided it, unless there was sufficient specific evidence of their common intention that they should be entitled in other proportions, that common intention being a shared intention communicated between them and made manifest at the time of the transaction itself. Since in the present case it was clear, notwithstanding any subjective intention each might have had, that there had been no discussion between the parties as to their respective beneficial interests, it must follow that the presumption of a resulting trust was not displaced, and accordingly, since the plaintiff's contribution to the purchase price, taking into account the discount attributable to her tenancy, and her cash contribution at the time of purchase amounted to some £18,000 and the defendant's to some £6,000, the respective beneficial interests of the parties were 75 per cent and 25 per cent.

In *Springette* the recorder at first instance reached the conclusion (see the judgment of Dillon LJ at 391):

> ... that they were to share equally, on the ground essentially that, though neither of them ever said anything about it to the other, each of them had in fact in his or her own mind an uncommunicated belief or intention that they were to share 49 St Andrews Road equally.

This conclusion of the recorder was reversed by the Court of Appeal. Dillon LJ dealt with it as follows (at 392):

> However, the fact that after the purchase the mortgage was paid in equal shares is not evidence that they had a common intention that the property itself should belong to them in equal shares beneficially. It is merely evidence that, as the recorder found, they had agreed that they would each pay half of the mortgage payments; it goes no further than that.

> Accordingly, the case for equal beneficial shares must rest on the uncommunicated belief/intention of each that they would be sharing benefit as well as burden equally.

And Dillon LJ concluded thus (at 393):

> But the common intention of the parties must, in my judgment, mean a shared intention communicated between them. It cannot mean an intention which each happened to have in his or her own mind but had never communicated to the other.

Steyn LJ concurred and said (at 394, 395):

> On the appeal the question is whether the assistant recorder was right in concluding on the evidence that an actual common intention at the time of the purchase to acquire the property in equal beneficial shares had been established.
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> When they gave evidence the parties were agreed on one point. There had been no discussion or communication between them as to the beneficial shares which they would have in the property. And the Judge accepted that evidence, subject to minor and immaterial qualifications. On behalf of the respondent it was suggested that the parties must have communicated an intention that they should have equal shares at a subconscious level. I fear that will not do. Our trust law does not allow property rights to be affected by telepathy. *Prima facie*, therefore, the alleged common intention was not established.
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> Can it make any difference that both the man and the woman thought that they were acquiring equal shares, albeit they did not say so to each other? No authority in favour of an affirmative answer was cited. In my judgment the answer must be a decisive no. The law must perforce concentrate on external signs of common intention. It must concentrate on what was said or done, rather than on what was privately thought or speculated. If any authority for this proposition is needed, it is to be found in the decision of the House of Lords in *Lloyds Bank plc v. Rosset and Another* [1991] 1 AC 107 at p. 132F, [1990] 2 FLR 155 at p. 163G; see also *Gissing v. Gissing* [1971] AC 886 at p. 906B-D.
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> ... In judging whether there was an actual common intention, the law must concentrate on manifested and communicated intentions.

Where the property was purchased in joint names and the purchase money was provided in unequal shares, as in the present case, there is then a resulting trust for each other in the proportions in which they had provided the purchase money. Then only will the question arise as to whether the presumption of the resulting trust has been displaced by evidence of a common intention (which had been communicated between them and made manifest at the time of the acquisition itself) to share the property in other proportions or, to have one of them take the whole beneficial interest in the property, notwithstanding the inequality of their contributions to the purchase price.

In order to displace the presumption of a resulting trust in such a case, it is necessary to establish that there is evidence of their having manifested to one another at the time of the acquisition of the property an actual common intention as to how the beneficial interests should be held other than in the proportions on which they have provided the purchase money. To use the words of Dillon LJ (*ibid* at 393), "But the common intention of the parties must, in my judgment, mean a shared intention communicated between them. It cannot mean an intention which each happened to have in his or her mind but had never communicated to the other." And Steyn LJ in the same case said (*ibid* at 394), "Our trust law does not allow property rights to be affected by telepathy." See also *Gissing v. Gissing* [1971] AC 886, HL, where Lord Diplock said, at 906B-F:

> As in so many branches of English law in which legal rights and obligations depend upon the intentions of the parties to a transaction, the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party. On the other hand, he is not bound by any inference which the other party draws as to his intention unless that inference is one which can reasonably be drawn from his words or conduct. It is in this sense that in the branch of English law relating to constructive, implied or resulting trusts effect is given to the inferences as to the intentions of parties to a transaction which a reasonable man would draw from their words or conduct and not to any subjective intention or absence of intention which was not made manifest at the time of the transaction itself. ...
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> In drawing such an inference, what spouses said and did which led up to the acquisition of a matrimonial home and what they said and did while the acquisition was being carried through is on a different footing from what they said and did after the acquisition was completed. Unless it is alleged that there was some subsequent fresh agreement, acted upon by the parties, to vary the original beneficial interests created when the matrimonial home was acquired, what they said and did after the acquisiton was completed is relevant if it is explicable only upon the basis of their having manifested to one another at the time of the acquisition some particular common intention as to how the beneficial interests should be held.

See also *Lloyds Bank plc v. Rosset* [1991] 1 AC 107 by Lord Bridge of Harwich at 132F:

> The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been.

When it is established by evidence of a common intention as to how the beneficial interests should be held by the parties, then in such a case, the presumed resulting trust is displaced (rebutted). Once a finding to this effect is made it will be necessary next for the party who is claiming a greater proportion of the share of the property than his or her contribution to the purchase price to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust. This is how Lord Bridge put it, *ibid* (132G):

> Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a propriety estoppel.

See also *Halsbury's Laws of England*, 4th edn, Trusts vol. 48 (Reissue), para. 612 at p. 325:

> Where property is purchased in joint names, without any express declaration as to their beneficial interests, then, ... if the purchase money was provided in unequal shares, then each party has an equitable tenancy in common under a resulting trust with shares proportionate to his or her respective contributions to the purchase price (*Bernard v. Josephs* [1982] Ch. 391; *Young v. Young* [1984] FLR 375, CA). ... Provision of the purchase money may arise from payment of mortgage instalments or of the deposit or of legal fees. (*Gissing v. Gissing* [1971] AC 886, HL; *Re Densham (a bankrupt), ex p. the trustee of the bankrupt v. Densham* [1975] 3 All ER 726. The contribution must be to capital expenditure and not to income expenditure e.g. rent: *Savage v. Dunningham* [1974] Ch. 181). ... Where property is bought with the aid of a mortgage, the court has to assess each of the parties' respective contributions in a broad sense; but the court is only entitled to look at the financial contributions, or their real or substantial equivalent, to the acquisition of the property (*Burns v. Burns* [1984] Ch. 317 at 344, CA per May LJ; *Bernard v. Josephs* [1982] Ch. 391, CA). *Prima facie*, if the purchase is financed in whole or in part on mortgage, the person who assumed liability for the mortgage payments, as between the joint owners, is to be treated as having contributed the mortgage moneys *(Re Gorman (a bankrupt) ex p. the trustee of the bankrupt v. The bankrupt* [1990] 1 All ER 717; *Huntingford v. Hobbs* [1993] 1 FCR 45, CA).

Where the house is taken in only one of the two names, usually in practice the man's, the position is more complicated. Subject to any express declaration of trust, where the property is purchased in the man's name but both parties contribute to the purchase price, the woman acquires an interest under a resulting trust proportionate to her contribution to the purchase price (*Pettit v. Pettit* [1970] AC 777, HK; *Gissing v. Gissing* [1971] AC 886, HL; *Cowcher v. Cowcher* [1972] 1 All ER 943). Alternatively she may wish to make a claim under a constructive trust. On such a claim the first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially (*Lloyds Bank plc v. Rosset* [1991] 1 AC 107, HL, citing the leading cases of *Pettit v. Pettit* [1970] AC 777, HL; *Gissing v. Gissing* [1971] AC 886, HL). This common intention, which has been said to mean a shared intention communicated between them (*Springette v. Defoe* [1992] 2 FLR 388 at 393, CA per Dillion LJ) and which must relate to the beneficial ownership of the property can only be based on evidence of express discussions between the parties, however imperfectly remembered and however imprecise their terms may have been (See *Grant v. Edwards* [1986] Ch. 638, CA; *Hammond v. Mitchell* [1992] 2 All ER 109). Once a finding to this effect is made, it will only be necessary for the party asserting a claim to a beneficial interest against the party entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel (*Lloyds Bank plc v. Rosset* [1991] 1 AC 107, HL; *Hammond v. Mitchell* [1992] 2 All ER 109).

Where the acquisition was in the joint names of the parties and if evidence of a shared or sole beneficial interest in the property (even though in unequal proportions to the contributions made by the parties to the purchase price) is established, then the presumption of a resulting trust (where the parties hold the shares of each other in the property as trustees for one another proportionate to their contributions to the purchase money) is displaced (and if the requisite detriment is established) by a constructive trust.

The Facts

The parties bought the house (No. 114, Pinggiran Ukay) from Fu Lee Development Sdn Bhd for $120,227.50. They obtained a housing loan from Bank Bumiputra (M) Berhad for the sum of $84,000 to pay the balance of the purchase price to Fu Lee Development. The property which is registered in their joint names was charged to the bank as security for the loan. Subsequently the charge was discharged by the bank when Miss Liew repaid the bank the balance that was due on the loan.

The figures below are taken from the statement of agreed facts and they are not in dispute. Thus:

> The price of the property (house No. 114, Pinggiran Ukay, Mukim of Ulu Kelang, Selangor) as stated in the Sale and Purchase agreement dated 1/6/79 was $120,227.50.

Mr Fork Kian Seng

Cash contribution to the purchase of the house

Date	Amount	Paid to
13-8-79	$ 150.00	Fu Lee Development
14-1-80	$1,157.00	CH Liew & Co
25-3-80	$ 528.00	Hisham, Sobri & Kadir
21-4-81	$ 358.05	Fu Lee Development
12-1-82	$ 204.60	Fu Lee Development
20-4-82	$ 40.00	Fu Lee Development
25-5-83	$1,000.00	interest Bank Bumi
4-7-83	$1,000.00	interest Bank Bumi
25-8-83	$1,000.00	interest Bank Bumi
22-7-83	$ 260.00	Fu Lee Development
15-9-83	$1,000.00	interest Bank Bumi
6-11-84	$ 776.01	interest Bank Bumi
4-3-83	$ 861.50	CH Liew & Co
31-3-83	$1,000.00	interest Bank Bumi
8-12-82	$1,477.00	CH Liew & Co
Total	$ 10,812.16	

Miss Liew Choy Hung

Cash contribution to the purchase of the house

Date	Amount	Paid to
2-5-79	$12,022.75	Fu Lee Development
6-3-80	$12,022.75	Fu Lee Development
27-2-81	$12,162.00	Fu Lee Development
19-12-84	$ 3,000.00	interest Bank Bumi
11-4-84	$ 2,000.00	interest Bank Bumi
21-8-85	$ 3,000.00	interest Bank Bumi

15-8-88	$24,279.07	loan repayment to Bank Bumi
15-10-88	$24,279.02	loan repayment to Bank Bumi
15-11-88	$24,279.07	loan repayment to Bank Bumi
Total	$117,044.66	

These figures give, on a resulting trust, for practical purposes, Mr Fork 8.5 per cent and Miss Liew 91.5 per cent share in the property. On these facts the parties are presumed by operation of law to hold the property on a resulting trust for each other in proportion to the purchase money that they have provided.

But Miss Liew was not satisfied with this. She thought that she could have the house all to herself. She said that in 1986 the bank was demanding repayment of the money owed to the bank on overdue instalments and was threatening to apply to court for an order for sale of the property. And she said that was when Mr Fork told her, "I have only a very small share in this property. Do not let the bank auction the land. Take over my share and redeem the property. I owe you a lot of money and take over my share." When her counsel Miss Chew asked, "What do you understand when the defendant says 'Take over my share'?" Miss Liew replied, "Whatever he owed to me would amount to a contra of his share." On this evidence the question is whether the resulting trust has been displaced and the answer will depend on whether on the evidence that an actual common intention at the time of the purchase to acquire the property solely for Miss Liew's own beneficial interest had been established. In the event that the resulting trust is displaced by such evidence, then, the next question is whether Miss Liew is alone entitled to the whole beneficial interest in the property on a constructive trust. A constructive trust exists if the requisite detriment is established. The acceptance of Mr Fork's "very small share" in the property as set-off for the money owed to Miss Liew by Mr Fork (if it can be proved) will constitute the requisite detriment.

This communication was supposed to have taken place in 1986. There had been no discussion between Mr Fork and Miss Liew at the time of the purchase of the property in 1979 (the sale and purchase agreement was dated 1 June 1979) as to the beneficial shares which they would have in the property, let alone a communication from Mr Fork to Miss Liew asking her to take over his share of the property. In my judgment the alleged common intention which would have displaced the resulting trust was not established.

At the beginning Mr Fork also claimed for the whole beneficial interest in the property. He said that he had bought over Miss Liew's share in the property. If that was true then he would have been entitled to the whole of Miss Liew's share in the property. In such an event happening the resulting trust would have been displaced, not because of any pre-existing common intention as there was none but, by a binding contract under the Contracts Act 1950. See *Gissing v. Gissing (supra)* by Lord Diplock at 906DE-F:

> ..., what spouses said and did which led up to the acquisition of a matrimonial home and what they said and did while the acquisition was being carried through is on a different footing from what they said and did after the acquisition was completed. Unless it is alleged that there was some subsequent fresh agreement, acted upon by the parties, to vary the original beneficial interests created when the matrimonial home was acquired, what they said and did after the acquisition was completed is relevant if it is explicable only upon the basis of their having manifested to one another at the time of the acquisition some particular common intention as to how the beneficial interests should be held.

In order to succeed Mr Fork has to establish a subsequent fresh agreement to vary the original beneficial interests created when the property was acquired. This is what he said, "In mid 1981 I made an offer to buy over the property from the plaintiff. I mean to buy over her share of the joint property." When his counsel Mr Leong asked him about the terms of the contract, he said, "I suggested that I would pay her $1,200 a month to progressively acquire her share of the joint property and also from time to time I would give her larger sums when I have the money." When asked what the price was for the sale of Miss Liew's share of the property, he replied, "I first suggested that the property should be sold at the original purchase price. The plaintiff wanted the market value. After some discussions and disagreement, we arrived at a figure which we think is $122,400." He also said that Miss Liew was supposed to draw up a written agreement but the agreement was not drawn up. He said (under cross-examination by Miss Chew), "I did offer to buy from the plaintiff her half share at the purchase price but the plaintiff insisted at the market value and not at the original purchase price." When asked by Miss Chew how he had arrived at the figure of $122,400, he answered, "It must have come about after discussions with the plaintiff since she did not want to sell it to me at the original price." So much for the so called agreement on the price for the sale of Miss Liew's share in the property. When giving evidence in chief he said that they have agreed at a figure which they thought was $122,400. But under cross-examination he said that the price must have come about after discussing it with Miss Liew who did not want to sell at the original price. If there was in fact an agreed price, then he should know what

the amount was. As the case stands, he was vague about the agreed price. He said that he thought it was $122,400 but later he changed it to it must have come about after discussing it with Miss Liew. In my judgment I do not think he was telling the truth. When he said that he thought the agreed price was $122,400 he knew then that there was no agreement reached on the price. He has said that Miss Liew did not want to sell at the original price which was $120,227.50 but at market value. This clearly demonstrates that no agreement was ever reached on the price at all and the so-called agreed price of $122,400 could not have been the market price (which was Miss Liew's price) as it was a figure that was arrived at by arithmetical calculation only, not one which was based on a valuation of the market price. This is how, I think, Mr Fork arrived at his calculated sum of $122,400. In order to pay $120,000 which was the original price in round figures (the actual original price was $120,227.50) at $1,200 a month would have required 100 instalments. And by adding just two further instalments, the figure of $122,400 was arrived at.

When Miss Chew asked him, "Have you paid in full the sums of $122,400?" He replied, "I believe I would have paid in full." Miss Chew then asked "But you have nothing to substantiate that?" There was no answer. In my judgment I do not believe that he ever paid $1,200 a month or any other sums to purchase Miss Liew's share of the property. I do not believe that there was any agreement at all for the sale of Miss Liew's share of the property to Mr Fork.

When Miss Chew asked him in cross-examination, "What about the loan from the bank? Who takes over the loan?" His reply was, "There was no mention of that since there was no discussion of that." "Who serviced the loan then?" asked Miss Chew. He replied, "I think I did from time to time because I was paying her by instalments." Then followed these questions and answers.

Q: But it still has to be serviced by you because you have bought her entire share for $122,400.

A: It should be me if I have paid her in full.

Q: Since you say you are paying her by instalments, what was the arrangement for paying the loan?

A: That was not mentioned in our discussion.

All this, to my mind, made the so-called agreement (if one ever existed at all) void for uncertainty: see s. 30 Contracts Act 1950 which says, "Agreements, the meaning of which is not certain, or capable of being made certain, are void."

In the result I find that the parties hold the property on a resulting trust for each other in proportion to the purchase money that they have provided. That means, in my judgment, Mr Fork is entitled on a resulting trust to an aliquot share of the property for his contribution of $10,812.16 (which for practical purposes is 8.5 per cent) and Miss Liew is also entitled on a resulting trust to an aliquot share of the property for her contribution of $117,044.66 (which for practical purposes is 91.5 per cent). This trust could be enforced by an order for sale and the proceeds of the sale (after deducting all reasonable expenses incurred for putting the property up for sale) will be divided between the parties in the proportions that I have indicated. See *Cooke v. Head* [1972] 1 WLR 518 where Lord Denning MR ventured to suggest, at 520, that the trust could be enforced by an order for sale. He said:

> ... whenever two parties by their joint efforts acquire property to be used for their joint benefit, the courts may impose or impute a constructive or resulting trust. The legal owner is bound to hold the property on trust for them both. This trust does not need any writing. It can be enforced by an order for sale, but in a proper case the case can be postponed indefinitely. It applies to husband and wife, to engaged couples, and to man and mistress, and maybe to other relationships too.

The Claims For Money Lent

Miss Liew claims that she had lent money to Mr Fork during the fifteen years when they were living together.

Some of these loans went as far back as 1981. She filed her action in 1992. I was quite surprised to find that limitation of time was never raised as a defence.

Miss Liew claims that the cheques listed in exh. B (which is an agreed document) are for loans that she had given to Mr Fork. Mr Fork has denied that he had borrowed those sums from her. As a matter of law proof of payment of money *prima facie* imports an obligation to repay (on a resulting trust as a voluntary transfer of property to another) in the absence of any circumstances tending to show anything in the nature of a presumption of advancement or that the money had been paid in settlement of an existing debt or that the cheques were given in return for cash: see *Seldon v. Davidson* [1968] 2 All ER 755, CA. The headnote reads, at 755:

> Held: ... the burden of proof was on the defendant ... because, in the absence of any circumstances tending to show that a presumption of advancement arose or that the money had been paid in settlement of an existing debt or that the cheques were given in return for cash, the admitted payments imported a *prima facie* obligation to repay.

Willmer LJ at 757:

> The way I look at it is this. Payment of the money having been admitted, *prima facie* that payment imported an obligation to repay in the absence of any circumstances tending to show anything in the nature of a presumption of advancement. This is not a case of father and child, or husband and wife, or any other such blood relationship which could have given rise to a presumption of advancement. Counsel for the defendant who has argued the case in support of the appeal, was constrained to admit that the house, which had been bought with the aid of the money paid by the plaintiff, is no doubt *prima facie* subject to a resulting trust in favour of the plaintiff. That being so, it would be strange indeed if the same considerations did not apply to the money paid by the plaintiff to the defendant to assist him in the purchase of the house.

And a little further down the page the judge said this:

> ... we have from the defendant in this case a clear admission of the payment of the money, and no suggestion that it was paid in settlement of an existing debt, or that it was given in return for cash, or anything of that sort. In the absence of any such circumstances, money paid by the plaintiff in circumstances such these is *prima facie* repayable on demand.

Seldon v. Davidson is a case where the payments were admitted by the defendant so that the burden of proof was on him to prove that there was no obligation on his part to repay the plaintiff because the payments were gifts to him, or that the money had been paid to him in repayment of a debt due by the plaintiff, or that the cheques were given to him in exchange for cash. But in the present case the payments by the cheques listed in exh. B were not admitted by Mr Fork. In such a situation the burden of proof is on Miss Liew to prove that Mr Fork had received the payments by those cheques.

Miss Liew produced photocopies of the following cheques listed in exh. B:

Cheque No.	Date	Amount	Exhibit No.
OCBC 77048	24/6/85	10,000.00	P1
OCBC 262413	18/2/86	600.00	P2
OCBC 344833	8/12/86	1,558.20	P3A
OCBC 387235	17/5/87	606.21	P3B
LEE WAH 222042	6/8/88	1,000.00	P9

They were all crossed cheques made payable to Mr Fork. All the cheques have been cleared by Miss Liew's bank. There was also another cheque which is not listed in exh. B but which Miss Liew has tried to prove by producing a photocopy of it. Since there was no objection to its admissibility by Mr Leong, I have allowed its admission and marked it as exh. P4. P4 was a crossed cheque for $557.30 payabale to Mr Fork which was cleared by Miss Liew's

bank. In my judgment, I find that Miss Liew has proved that Mr Fork had received the payments as shown by these cheques. The burden of proof has now shifted to Mr Fork to prove that there was no obligation on his part to repay Miss Liew. Mr Fork only denied that he had borrowed those sums from Miss Liew but, in my judgment, that is not sufficient to rebut the presumption of the resulting trust in the present case. Once it is proved that the payments have been made to him as a volunteer there is an obligation on his part to repay to the grantor on a resulting trust. The onus is now placed on him to prove the facts that would show that the money was not repayable. There was no suggestion from Mr Fork that the payments by cheques were gifts, or that they were paid in settlement of an existing debt, or that they were given in return for cash, or anything of that sort which would have displaced the resulting trust. In the absence of any such circumstances, the proof of payment of money (being a voluntary transfer of property to another) *prima facie* imports an obligation on the recipient to repay to the grantor on a resulting trust: see *Seldon v. Davidson (supra)*.

On the other hand, Miss Liew was not able to produce the copies of the other four cheques listed in exh. B which I show below so she produced the butts of those cheques and her bank statements (to try to show that the cheques had been cleared by her bank) instead:

Cheque No.	Date	Amount	Exhibit No.
OCBC 781179	15/5/81	2,000.00	P5A, P5B statement
OCBC 832378	6/11/81	13,000.00	P6A, P6B statement
OCBC 18384	23/10/82	7,499.56	P7A, P7B statement
OCBC 262401	29/8/85	742.92	P8A, P8B statement

Mr Leong argued that by merely producing the butts and bank statements do not necessarily mean that Mr Fork had received the payments. I agree with Mr Leong that Miss Liew has not managed to prove that the amount shown on the butts have been paid to Mr Fork. Mr Ford did not admit to the receipt of the payments so that the burden of proof is on Miss Liew to prove that she had paid those sums to him. I have not seen the cheques nor the photocopies of them so that I am unable to say if the cheques were made out to Mr Fork or if the amount on the cheques have been paid into his bank account. Without an admission from Mr Fork that he had received the money, or the production of the actual cheques (or at least photocopies of them as agreed documents) or anything like an IOU from Mr Fork for the payments, or any other direct evidence of receipt of the payments, I am unable to find with any degree of confidence that the alleged payments were received by Mr Fork. I am, therefore, constrained to hold that Miss Liew has failed to prove that the amounts written on the cheque butts were received by Mr Fork.

In the same exh. B Mr Fork has also a claim for the payments he said he had made by three cheques to Miss Liew. I list below the cheques as I find them on exh. B, thus:

Bank	Cheque No.	Date	Amount
Public Bank	363719	10/6/87	8,802.00
Public Bank	738310	26/1/89	630.00
Public Bank	738304	23/12/89	1,151.00

The payments were disputed by Miss Liew, so that the burden of proof is on Mr Fork to prove that Miss Liew had received the payments from the above cheques. Mr Fork did not produce the cheques or anything of the sort that would show that Miss Liew was the payee. He also gave uncertain evidence as to why the payments were made. At first he said that the payments were for the purchase of Miss Liew's share of the property. Later, under cross-examination by Miss Chew, he changed his mind. He said, "The loans were made to her. She has not repaid me. So my thinking is since this property is in dispute this amount should go towards payment to increase my shareholding in the disputed house." Since he was unsure as to what the payments were for and, furthermore, I also find as a fact that Mr Fork has failed to prove that Miss Liew had received the payments represented by these three cheques.

The Claims For The Rentals

In para. 9.1. of her statement of claim Miss Liew claims the rentals which she says Mr Fork had collected from the tenants of two of her other premises when she was away abroad which he did not hand over to her. She claims (in para. 9.1. of her statement of claim):

(a) Rentals and miscellanous sums from No. 11, Jalan Boon Kim $2,611.00

(b) Rentals from K3 Flat, Menara Impian, Taman TAR, Kuala Lumpur 4,500.00

Miss Liew's evidence was surprisingly brief. She said, "From the agreed bundle at p. 80 I am claiming $1,311, for rental collected by the defendant from my tenant at No. 11, Jalan Boon Kim. I am referring to the part that is in the box. It is in the defendant's handwriting." But when her counsel Miss Chew asked her why in her statement of claim she is claiming the sum of $2,611 for No. 11, Jalan Boon Kim, she replied, "$1,311 is two months rentals at p. 80 of agreed bundle leaving $1,300 outstanding which is the amount stated in exh. P10B for No. 11, Jalan Boon Kim. So if you add the two together we get $2,611." That was a strange answer because when I looked at p. 80 of the agreed bundle I found that the amount of $1,311 was made up of:

1 month deposit		$ 650.00
Electricity, water deposit		300.00
Legal fees		267.00
Disbursements		94.00
		$1,311.00
Add the June and July rentals:	June	650.00
	July	650.00
And that makes the total sum:		$2,611.00

She has also claimed $4,500 which she says Mr Fork had collected from the tenant of her flat K3, Menara Impian, Taman TAR, Kuala Lumpur. When Mr Fork was asked by his counsel Mr Leong that, "The plaintiff is saying that you have received these monies and you have not paid her?" His answer was, "It is not true." When asked to explain, he said, "This could be that when she was abroad I have been asked to receive those rentals which have been paid in cheques in her name. I would give the cheques to her accounts clerk to bank it in."

Miss Liew says that she has not received the rentals that Mr Fork was to have collected for her from her tenants. Mr Fork did not deny that he had collected the rentals for her when she was abroad but he said that he had handed the cheques from the tenants to a clerk in Miss Liew's office. The burden of proof is on Miss Liew to prove that Mr Fork had taken the money from her tenants for himself. In my view it would have been so easy for Miss Liew to call her tenants to verify from them if they paid by cheque or in cash. Also, she could have verified (if the tenants paid by cheque) whether the cheques were paid into her office account or into Mr Fork's own bank account. But Miss Liew did not try to prove that Mr Fork had taken the money from the rents that he had collected from Miss Liew's tenants. I, therefore, find as a fact that Miss Liew has failed to prove that Mr Fork had kept the rent money that he was supposed to have collected from Miss Liew's tenants for himself.

Mr Fork has also in his counterclaim claimed for a share of the rentals which he alleged was collected by Miss Liew from the joint property. Apart from making the claim in his counterclaim he did not lead evidence on this at all at the trial. There was nothing in evidence that would show if the joint property was ever let out to anyone, or if rent was paid for its occupancy, or if Miss Liew had taken any of the rent money for herself. In the circumstances as Mr Fork did not prove anything at all, I dismiss his claim against Miss Liew under this head of claim. In any case even if it can be proved that Miss Liew had actually collected rent from a tenant of the joint property, as a joint

proprietor she was perfectly entitled to do that. Mr Fork as co-proprietor could only claim an aliquot share of the rentals received by basing it on his aliquot share in the property which is 8.5 per cent and not for the whole sum collected as rent (which is what he has pleaded in his counterclaim). If such an event ever occured then Miss Liew would be fully entitled to claim as a set off to this claim the sums that she had paid for quit rent and rate for all the years that the parties have jointly owned the property.

Miss Liew could not, however, increase the size of her contribution to the purchase money by including the quit rents and rates that she said she had been paying to the authorities all the while. Had it been possible for her to do that, it would have enlarged her aliquot share in the property to a higher percentage than what she is entitled to now. The contribution to the purchase price must be payments for the acquisition of the property. In the present case the payments for quit rent and local authority assessment were not paid for the acquisition of the property. In *Savage v. Dunningham* [1974] Ch. 181 Plowman J said, at 184:

> Rent, unlike purchase-money, is not paid for the acquisition of a capital asset, but for the use of a property during the term. In my judgment, therefore, the fact that the plaintiffs and the defendant shared the rent does not establish a resulting trust in favour of the plaintiffs.

The contribution to the purchase price must be for the acquisition of the property in order for a resulting trust to arise. Rent (to a landlord), quit rent, assessment (or rate) and other expenditure of a similar nature, unlike purchase money, are not paid for the acquisition of a capital asset, but for the use of a property or for the payment of tax levied on a property. The payment of rent is for the use of a property during the term of a tenancy. The payment of assessment or rate is for the payment of tax levied on a property by a local authority. And quit rent is paid for tax levied by a state authority for the ownership of land in the state. None of this sort of payment is paid for the acquisition of a capital asset. In my judgment, therefore, the fact that Miss Liew had paid the quit rent and assessment for the joint property does not establish a resulting trust in her favour by the payments. Therefore, Miss Liew's aliquot share in the joint property will not be increased by her paying the quit rent and assessment for the premises. On the other hand, if Miss Liew had wanted to be reimbursed by Mr Fork for his share of the contribution to the payment of quit rent and assessment, she has to claim for the reimbursement under s. 70 of the Contracts Act 1950 in her statement of claim. She, however, did not do so.

a ***Conclusion***

Counsel for both parties have informed me that they have got together and had the joint property professionally valued and that it is the valuer's opinion that at today's market value the property is worth $400,000. The parties have agreed to accept this amount as the value of the property so that Mr Fork's
b 8.5 per cent share now becomes in terms of money $34,000 and Miss Liew's 91.5 per cent share becomes $366,000. They have also agreed for Miss Liew to take over Mr Fork's 8.5 per cent share in the property for the agreed sum of $34,000.

c In the result, I order that the defendant (Mr Fork) transfers his 8.5% per cent share in the joint property to the plaintiff (Miss Liew) at the agreed price of $34,000 and I also declare that the plaintiff, thereupon, shall be entitled to the whole beneficial interest in the property. The defendant shall deliver to the plaintiff's solicitors within seven days from the date of this judgment the
d original document of title for the property together with a registrable instrument of transfer which has been duly executed by the defendant for the conveyance of the defendant's co-proprietorship in the property to the plaintiff or her norminee, failing which the registrar of the High Court is authorised to execute the transfer on his behalf.

e There shall also be judgment for the plaintiff for the sum of $14,321.71. The defendant's counterclaim is dismissed. The plaintiff shall have the costs of the action which has been agreed at $18,178.29.

Effectively, it will only be the plaintiff who has to pay the defendant under
f the judgment. This is how I have calculated it:

The plaintiff is to pay the defendant for his 8.5 per cent share	$34,000.00
Less the amount of the judgment sum against the defendant	-14,321.71
	19,678.29
Less the agreed costs that the defendant has to pay the plaintiff	-18,178.29
That leaves the amount the plaintiff has to pay the defendant	$ 1,500.00

g

h By consent of the parties, the amount of $1,500 is to be paid by the plaintiff to the defendant within seven days from today.

i